

**Livernois Moving and Storage Co. and Local 243,
International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America.
Cases 7-CA-20708(1) and 7-CA-21041**

21 March 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

On 15 April 1983 Administrative Law Judge Thomas D. Johnston issued the attached decision. Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief, and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Livernois Moving and Storage Co., Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all of the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² In sec. III.B of his decision describing the events of 16 December 1982, the judge inadvertently stated that Russell and Stead indicated they attempted to chase "Patrick"; the correct reference should be "Lewkut."

In agreeing with the judge's conclusions, we find it unnecessary to rely on the judge's citation of *Interboro Contractors*, 157 NLRB 1295 (1966), *enfd.* 388 F.2d 495 (2d Cir. 1967). It is clear that the grievance activity in this case was protected concerted activity since the Union was involved. See *NLRB v. Adams Delivery Service*, 623 F.2d 96 (9th Cir. 1980).

DECISION

STATEMENT OF THE CASE

THOMAS D. JOHNSON, Administrative Law Judge. These consolidated cases were heard at Detroit, Michigan, on January 7 and 19, 1983, pursuant to charges filed by Local 243, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein referred to as the Union) in Case 7-CA-20708(1) on May 21, 1982,¹ and in Case 7-CA-21041 on August 11 and a consolidated complaint issued on September 29.

¹ All dates referred to are in 1982 unless otherwise stated.

The consolidated complaint, which was amended at the hearing, alleges Livernois Moving and Storage Co. (herein referred to as the Respondent) violated Section 8(a)(1) of the National Labor Relations Act (herein referred to as the Act) by unlawfully threatening employees with discharge; threatened to break the union steward's legs for filing a grievance; hit the union steward's truck with a vehicle in order to discourage him for following struck work; assaulted strikers' vehicles with clubs and bats; shot a striking employee on the picket line with a pellet gun; told employees it was not going to sign a contract because it would have to bring all the striking employees back to work which it did not wish to do because the employees had filed grievances; told striking employees they would all be out of a job because the Company was going to go out of business; threw nails in the driveway of a striking employee; caused damage to a picketing employee's vehicle by throwing objects at it; threatened to blow up or burn down picketing employees' houses; and assaulted striking employees with crowbars and chains and damaged their vehicles by pouring gasoline on them. It further alleges the Respondent refused to comply with the terms of an informal settlement agreement in Case 7-CA-20708(1) by engaging in similar acts of violence and ordered the withdrawal of the approval of the agreement and vacated such agreement.

The Respondent in its answer dated October 12, which was amended at the hearing, denies having violated the Act and asserts as affirmative defenses that the Union failed to serve the charges on the Respondent as provided by the Rules and Regulations of the Board and that the Union engaged in and sanctioned continuous acts of violence, sabotage, and intimidation whereby they should be denied the benefits of the Act and/or any remedial relief requested in the complaint.²

The issues involved are whether the Respondent violated Section 8(a)(1) of the Act by engaging in unlawful statements and threats, assaulting strikers, assaulting and damaging strikers' vehicles, shooting a striker with a pellet gun or throwing nails in a striking employee's driveway. An additional issue is whether a settlement agreement in Case 7-CA-20708(1) was properly vacated and set aside because the Respondent violated the terms and conditions of such agreement.

² The affirmative defense that the Union should be denied benefits or remedial relief under the Act was rejected at the hearing. Further, no credible evidence was adduced to establish with regard to any of these unlawful incidents herein discussed that the Union did anything on those particular occasions to cause or precipitate the Respondent's unlawful conduct. Although Sec. 102.14 of the Board's Rules and Regulations and Sec. 101.4 of the Board's Statements of Procedure provide that the charging party is responsible for the timely and proper service of a copy of the charge on the parties against whom such charge is made, these provisions also provide that the Regional Director will cause a copy of such charge to be served. Inasmuch as copies of charges in the instant cases were served on the Respondent by the Regional Director for Region 7, who under Sec. 11(4) of the Act can serve the charge through certified mail the affirmative defense urged by the Respondent that the Union failed to serve the charges lacks merit and is hereby rejected. See *T.L.B. Plastics Corp.*, 266 NLRB 331 (1983); and *NLRB v. Ann Arbor Press*, 188 F.2d 917, 926 (6th Cir. 1951).

On the entire record in these cases and from my observations of the witnesses and after due consideration of the brief filed by the Respondent,³ I make the following⁴

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a corporation organized under and existing by virtue of the laws of the State of Michigan and with its office and place of business located at Detroit, Michigan, is engaged in the business of the transportation of freight and commodities. During the calendar year 1981, the Respondent in the course of its operations derived gross revenues in excess of \$50,000 for the transportation of freight and commodities in interstate commerce pursuant to arrangements with and as agent for various motor truck freight carriers, including Atlas Van Lines, which operates between and among various States of the United States. The Respondent by virtue of such operations functions as an essential link in the transportation of freight and commodities in interstate commerce.

The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 243, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

The Respondent is engaged in the transportation of freight and commodities. It has two facilities located at Detroit, Michigan. The office, repair garage, truck parking, minimal storage, and a public scale are located on Schaefer Highway (herein referred to as the Schaefer facility). The other facility located approximately 1-1/2 miles away on Hubbell (herein referred to as the Hubbell warehouse) is used for storage, crating, and uncrating of import-export household goods and truck parking.

Edgar Patrick is the sole owner of the Respondent. His son David Patrick and his nephew Jeffrey Russell both work there. None of these three persons has a job title.⁵ Russell⁶ performs duties as a driver, warehouseman, packer, and helper. The dispatching of jobs is performed by both Edgar Patrick and David Patrick.

The Union has represented the Respondent's employees for approximately 43 years. The last collective-bargaining agreement between them expired the end of May and, since about June 1, the Union has been engaged in a strike against the Respondent. During the strike the Respondent's striking employees have picketed both the Schaefer facility and the Hubbell warehouse. Additional-

ly, they have engaged in ambulatory picketing by following the Respondent's trucks to picket them when and where they make deliveries. These proceedings arose out of conduct occurring both before and during the course of the strike and picketing.

B. Unlawful Statements, Threats, Assaults, Damages, and Other Conduct

Edward Kalis filed a grievance against the Respondent⁷ claiming David Patrick had made a baggage delivery which was Kalis' work and he was entitled to be paid for it. Kalis testified he presented this grievance to David Patrick. Although he first testified this occurred on May 28, his later recollection was it occurred on April 28. According to Kalis shortly thereafter while he and another employee Ernest Shaw, who was in the office when he gave the grievance to David Patrick, were in the parking lot by the building talking, David Patrick came out of the building with the grievance in his hand to where they were, cursed them and said that because of what Kalis had done, "Don't worry Kalis. Before this is over I'm going to have both your legs broken." Patrick, using profanity in referring to them, also said it really did not matter because in 2 weeks none of them were going to be working for him anyhow.

Ernest Shaw, who testified he was present, corroborated Kalis' testimony about his presenting the grievance to David Patrick and the statements Patrick made to them on the parking lot on April 28.

David Patrick acknowledged talking to Kalis about the grievance Kalis had filed which he said irritated him because he thought it was a waste of time. According to Patrick he received the grievance from his father⁸ rather than Kalis and placed the incident as occurring on May 7.⁹ Patrick denied threatening to break Kalis' legs or to fire Kalis or that Shaw, who he said left as he came out of the building, was present when he talked to Kalis. Patrick's version of the conversation was that after questioning Kalis about his filing a nit-picking grievance because Kalis had asked to be off early the day the delivery had to be made Kalis cursed him and claimed Patrick was doing his work and he wanted to get paid for it. According to Patrick they then became involved in a screaming match. Patrick however denied being able to recall everything he said and acknowledged he may have cursed Kalis.

Jeffrey Russell testified that near the end of April he saw Kalis give the grievance to Edgar Patrick and that while he was in the bathroom that same day he overheard the conversation between David Patrick and Kalis outside the bathroom window in the parking lot. Russell, who corroborated David Patrick's testimony, denied hearing Patrick tell Kalis he would break his legs or fire him. Russell also said when he looked outside the bath-

³ Neither the General Counsel nor the Charging party submitted briefs.

⁴ Unless otherwise indicated the findings are based on the pleadings, admissions, stipulations, and undisputed evidence contained in the record which I credit.

⁵ Both Edgar Patrick and David Patrick are supervisors under the Act.

⁶ No evidence was proffered to establish that Russell was a supervisor under the Act.

⁷ Kalis, who was the union steward, has previously filed grievances.

⁸ Although his father Edgar Patrick testified he did not testify about receiving this grievance.

⁹ David Patrick said he based the date on information taken from the grievance which he no longer had a copy of and on Kalis' timecard which was not offered as evidence.

room window he saw David Patrick and Kalis but not Shaw.

I credit both Kalis and Shaw rather than David Patrick and Russell whom I discredit and I find that about April 28 David Patrick threatened to break union steward Kalis' legs and threatened to discharge the employees because Kalis had filed a grievance. Apart from my observation of the witnesses in discrediting both David Patrick and Russell their overall testimony concerning this and other incidents about which they testified, discussed infra, does not appear plausible.

On June 7 several employees including union steward Kalis and John Gray were picketing at the Hubbell warehouse when Jeffrey Russell left the warehouse driving a truck. Kalis and Gray got into Kalis' pickup truck with Kalis driving and began following the truck Russell was driving. Kalis gave as his reason for following the truck was to picket it if a delivery was made. While proceeding in the proper lane northbound on Hubbell, which is a two-lane road with a center dividing line,¹⁰ Kalis estimated they were following the truck by a distance of approximately 6 to 10 feet and traveling at a speed of approximately 25 to 35 miles per hour. Kalis testified that David Patrick, who was driving his own pickup truck traveling in the same direction, pulled up in the southbound lane alongside his truck at which time Patrick turned his truck into Kalis' truck hitting it and trying to force it off the road. Upon impact Kalis' truck swerved to the right and Patrick's truck swerved a little to the left but then came back and struck Kalis' truck again. Kalis stopped his truck but Patrick kept going in his truck. According to Kalis, his truck received over \$1800 worth of damages as a result of this collision. Under cross-examination, Kalis acknowledged that when Patrick came up beside him in his truck he did not put on his brakes and that he was not going to let Patrick turn in between him and Russell's truck.

Gray corroborated Kalis' version of the incident.

David Patrick admitted his pickup truck collided once with Kalis' pickup truck; however, he denied it was intentional and claimed it was an accident. According to him on noticing that Kalis accompanied by Gray began following the truck Russell was driving after it had left the Hubbell warehouse he got into his own pickup truck and after catching up to them he pulled his truck up alongside Kalis' truck which he said was about 5 feet behind Russell's truck and tried to wave Kalis off when the collision occurred. According to Patrick after the collision both of their vehicles came to a stop whereupon he backed his truck up and then proceeded to follow Russell's truck. Under cross-examination Patrick, who placed Kalis' truck as being at least half to the right side of the lane behind Russell's truck, acknowledged it was possible that when he pulled alongside of Kalis' truck that part of his own truck was in the southbound lane. Patrick estimated the damage to his own truck was \$1200.

Patrick denied his purpose was to pass Kalis or to squeeze him out or to try to prevent Kalis from following Russell. He stated his reasons for following were be-

cause they were too close to Russell's truck and earlier that day Russell had reported to him that three pickets had followed Russell to McDonald's restaurant and threatened his life and when he saw Kalis and Gray follow Russell on that occasion he was afraid something was going to happen. Patrick acknowledged however that pickets had followed the Respondent's truck since June 1 when the strike started.

Russell admitted he did not see the collision which occurred behind the truck he was driving. He stated he only heard one collision which he said occurred after Patrick had pulled up alongside of and a little in front of Kalis' vehicle which he described as being half in the regular lane and half in the parking lane. Patrick's truck which was in the northbound lane moved slightly towards the parking lane after the collision.

According to Russell early that day upon going to McDonald's restaurant for lunch he was followed there by Egon Lewkut in his automobile accompanied by John Gray and Dan Keelan. Upon leaving the restaurant, Lewkut, Gray, and Keelan, who were in the automobile parked next to where he had parked, said if there wasn't a Detroit policeman there they would beat the . . .¹¹ out of him. John Gray credibly denied making such threat to Russell or that he had ever been to that McDonald's restaurant.

Russell also testified that following that incident at McDonald's restaurant while delivering some materials to the Hubbell warehouse Kalis and Gray in Kalis' vehicle followed him part of the way. Gray acknowledged having followed Russell earlier that day to the Hubbell warehouse but stated it was in his own automobile.

Russell, contrary to Patrick's testimony, stated he had arranged for Patrick to follow him on that occasion.

I credit the testimony of union steward Kalis and Gray and find that on June 7 David Patrick struck Kalis' truck with his own truck to discourage Kalis and John Gray from following the Respondent's truck for purposes of picketing it if it made deliveries. David Patrick and Russell are discredited for reasons previously given as well as the contradictions between their testimony concerning the reasons Patrick followed Russell on this occasion.

On June 14, John Gray, Egon Lewkut, Edward Kalis, Daniel Gray, and George Zarzycki were engaged in picketing at the Schaefer facility. They were located, while not walking back and forth on the sidewalk which runs in front of the property, about 5 to 15 feet to the left of the driveway which is the north entrance to the property from Schaefer Highway. The south entrance to the Schaefer facility from Schaefer Highway is located about 50 feet from the north entrance. There were also a couple of lawn chairs used by John Gray and Kalis on the sidewalk where the pickets were situated.

Kalis testified that morning while he and John Gray were sitting in the lawn chairs he saw David Patrick driving his pickup truck southbound on Schaefer Highway. When Patrick reached the north entrance he turned his truck into that driveway; however, instead of pro-

¹⁰ There are also parking lanes on each side of the street.

¹¹ The omitted word is a four-letter curse word.

ceeding on the driveway into the property the truck swerved to the left and came on the sidewalk to where they were. According to Kalis, both he and Gray had to jump out of the lawn chairs they were sitting in which Patrick's truck then ran over. The truck missed both Kalis and Gray but came within about a foot from where they had been seated. Patrick did not stop the truck but continued driving down the sidewalk and then entered the property near the south entrance. Kalis stated that after Patrick parked and got out his truck he yelled to him, "You guys want a fight? I'll give you a fight." According to Kalis the pickets made no response but went to the police station and filled out a report.

John Gray, except for stating that he and Kalis were standing up picketing rather than sitting down when the incident occurred and that Patrick used the words "play rough" rather than the word "fight," corroborated Kalis' testimony.

David Patrick acknowledged that such incident with the truck occurred and that the pickets, who were standing 10 to 15 feet to the left of the driveway, "got the heck out of the way" and the truck ran over one empty lawn chair. However, he denied he intentionally drove the truck at the pickets to strike them or to interfere with their picketing activities. His explanation was as he turned into the north driveway from Schaefer Highway the truck hit a hole¹² causing the steering wheel to be jerked out of his hand and after hitting the lawn chair with the truck he regained control of the truck and without stopping drove it into the property at the south end of the building.

Patrick, who normally used the south entrance when entering the property, stated he planned to use the north entrance on this occasion because roofing nails had previously been thrown on the south entrance driveway which had gotten into his vehicle's tires.

Based on the testimony of Kalis and Gray which I credit rather than Patrick for reasons previously given, I find that on June 14 David Patrick attempted to run down striking employees on the picket line with his truck. Patrick's claim that he lost control of his truck on that occasion is not only inconsistent with the description of what happened but also with his statements to the pickets immediately thereafter about if they wanted a fight he would give them a fight.

On June 17 Edward Kalis and John Gray along with several other employees were engaged in picketing at the Schaefer facility.

Kalis, whose testimony was corroborated by John Gray, testified that when David Patrick left the premises driving a tractor with a semitrailer, he and John Gray got into Gray's automobile with Gray driving and began following the truck for purposes of picketing the truck if it made a delivery. They followed the truck southbound on Schaefer Highway and then went westbound on West Chicago Road. While on West Chicago Road, Kalis noted Jeffrey Russell, who was driving David Patrick's pickup truck, and Edgar Patrick, who was driving his own automobile, following behind them. Upon reaching

Hubbell, Patrick's truck turned left on Hubbell and then stopped. Gray's automobile proceeded past Hubbell and then turned into an abandoned gasoline station at the intersection of Hubbell and West Chicago Road because of the two automobiles following them. This station is located about three blocks from the Hubbell Warehouse. Both Russell and Edgar Patrick then parked their vehicles next to David Patrick's truck which was parked on Hubbell parallel to that entrance to the abandoned station. David Patrick, Russell, and Edgar Patrick all got out of their vehicles. Edgar Patrick had a baseball bat and David Patrick and Russell each had a club.¹³ David Patrick then approached Gray's automobile as they were preparing to leave, hollering at them to come out and fight and threatened to fight them and then swung his club at Gray's automobile hitting it twice causing damage to the roof by putting a crease in it. After Gray backed his automobile into West Chicago Road and then started forward to leave, Edgar Patrick took a swing at the automobile with his baseball bat but missed and David Patrick threw his club at their automobile which struck the passenger side door damaging it by putting a crease in it. As they left, David Patrick hollered at them to come back and fight and cursed them.

During this time neither Gary nor Kalis got out of Gray's automobile or said anything to them. Russell also did not do anything or come near their automobile.

David Patrick gave a different version of the incident. According to him, his father Edgar Patrick was following immediately behind his truck in his automobile which was followed by Gray's automobile and then by Russell driving David Patrick's pickup truck. While proceeding on West Chicago Road he saw Gray's automobile pass his father's automobile,¹⁴ cut back across in front of it, and get behind Patrick's truck whereupon his father had to slam on his brakes and swerve to avoid hitting Gray's automobile. While turning on to Hubbell, Patrick noticed Gray's automobile continue past Hubbell and turn into the abandoned station. According to Patrick, he did not know what was going on so he pulled his truck over to the side of Hubbell and parked it after which his father parked his automobile behind the truck and Russell parked his truck in front of it. He and his father then approached Gray's automobile while Russell remained by his father's automobile and there was a heated exchange of words between Kalis, Gray, Edgar Patrick, and himself. Although Patrick denied being able to recall exactly what was said he recalled Kalis and Gray asking him what the hell was going on.

Patrick denied having a club or any kind of weapon in his hand or striking Gray's automobile with a club or throwing anything at their automobile. He acknowledged his father had a baseball bat in his hand which he said his father threw but missed Gray's automobile as it started to leave and swerved a little bit towards them.

Under cross-examination Patrick indicated he went to talk to Kalis and Gray because he was upset over their nearly causing his father to have an accident, and said as

¹² John Gray acknowledged there were ruts in the driveway and Kalis did not dispute it had ruts or holes in it.

¹³ Kalis described the clubs as being objects about 3 feet in length and shaped like baseball bats.

¹⁴ Both Kalis and Gray denied passing Edgar Patrick's automobile.

he approached the automobile he told them if they needed to pick on someone why pick on an old man when he was available. Patrick admitted he might have invited Gray or Kalis who remained in their automobile to get out of the automobile to fight him. Both Edgar Patrick and Russell corroborated David Patrick's testimony concerning the incident. Edgar Patrick, who is 78 years old, said he heaved the baseball bat at Gray's automobile as it was leaving after it swerved towards David Patrick. Under cross-examination Russell said he followed Gray and Kalis on this occasion because he saw them following David Patrick and Edgar Patrick.

Based on the testimony of Kalis and Gray, which I credit, I find that on June 17 David Patrick assaulted the automobile of striker John Gray with a club because Gray and Kalis were following the Respondent's truck for purposes of picketing it if it made deliveries. However, I find the evidence is insufficient to establish that Edgar Patrick also assaulted Gray's automobile as alleged. My reasons for discrediting David Patrick and Russell are as previously stated, and I do not find plausible the testimony of Edgar Patrick regarding this incident, particularly since he acknowledged approaching Kalis and Gray with a baseball bat in his hand.

Daniel Gray testified that about the end of June while picketing at the Schaefer facility he was on the sidewalk at the southwest corner of the office building when he was shot by a pellet gun. After being shot he turned and observed David Patrick, who was about 40 feet away, pulling away from the doorway of the building with a pellet gun. However, he acknowledged he did not actually see Patrick aim the gun or shoot him. Under cross-examination, Gray said when this occurred he was facing away from Patrick.

David Patrick, who acknowledged a pellet gun was kept at the Schaefer facility, denied ever shooting it at David Gray. The only time he shot it during the strike was in July when they were having trouble with pigeons and he shot it in the warehouse.

Since Gray neither saw Patrick aim the pellet gun at him or shoot it, I credit Patrick's denial that he shot the gun at Gray or shot the gun during that period. Further, I find Gray's own testimony was insufficient to establish he was actually shot by a pellet gun on that occasion absent as here any evidence of a sound of the pellet gun being discharged or a description of the alleged wound for purposes of ascertaining whether it could have been caused by a pellet gun.

Accordingly, I find the evidence was insufficient to establish that David Patrick shot striker Daniel Gray on the picket line with a pellet gun as alleged.

On June 7, Daniel Gray and other employees including Egon Lewkut, John Gray, Edward Kalis, and Ernest Shaw were picketing at the Schaefer facility.

Daniel Gray testified that morning he had a conversation with David Patrick during which he referred to the proposal Patrick had sent to the Union concerning a new contract and asked Patrick what kind of a proposal it was and whether he wanted them to take a \$4 or \$5 cut in pay to start back to work. Patrick's response was as far as he was concerned if he signed the contract at that time he would have to bring all of the employees back

which he was not going to do. During the conversation Patrick also said the Company was going out of business and mentioned Gray's brother John Gray, who worked for the Respondent, had grieved them out of a job which Patrick explained to mean that he was not going to call him back because of all the grievances and the Union behind them.

David Patrick, who said he might have had a conversation with Gray that day but did not recall having one, denied having made such statements.

I credit Gray rather than David Patrick, whom I previously discredited, and find that on June 7 David Patrick informed striking employee Daniel Gray he was not going to sign a contract because he would have to bring all the striking employees back to work which he was not going to do; and informed Daniel Gray the Company was going out of business and the striking employees would no longer have jobs and would not be recalled because of grievances having been filed.

On the evening of August 6 Edward Kalis, who had picketed early that day at the Respondent's premises, was at his home along with employee Ernest Shaw performing some work on Shaw's automobile. Kalis' wife was also present. The automobile was parked in the concrete driveway which runs beside the house and was behind the gate which is located across the driveway and even with the front of the house. This gate is about 25 feet from the street.

Kalis testified that while he was in his driveway behind the gate but near it and walking back to his truck to get some tools he heard nails hitting the driveway and when he looked he saw Edgar Patrick in his automobile directly in the middle in front of his driveway which was about 30 feet away. Patrick, who was alone, was in the driver's seat and the window on the passenger's side door of the automobile, which was the side of the automobile closest to Kalis' house, was rolled down. According to Kalis he immediately ran towards the street at which time Patrick's automobile sped off and by the time Kalis reached the end of the driveway Patrick's automobile had already gone around the corner. Kalis denied seeing any other vehicles along the street. He said his two sons and the neighbor's children were playing on the front lawn. Kalis described the front part of his driveway was covered with about a pound of roofing nails which he denied were there when Shaw had arrived.

Under cross-examination Kalis acknowledged he did not see Patrick put the nails in his driveway. Kalis in an affidavit¹⁵ given to a Board agent relates he saw Patrick drive by and he also heard the nails hit at the time Patrick drove by.¹⁶ While Kalis claims he also told the Board agent taking the affidavit that Patrick's automobile was stopped in front of the driveway he acknowledged this does not appear in his affidavit.

Ernest Shaw, who had been working underneath his automobile, stated about 5 minutes after getting out from

¹⁵ Portions of Kalis' affidavit were offered by the Respondent for purposes of impeaching Kalis' testimony.

¹⁶ The affidavit further reflects that Kalis stated since then he has had nails in his driveway frequently but has not seen anyone put them there.

underneath it he saw Edgar Patrick driving past Kalis' home. Kalis then mentioned to him about their going out the driveway whereupon he and Kalis walked down the driveway and picked up some roofing nails on the front part of the driveway which were not there when he had arrived. Shaw estimated he saw a couple of dozen nails.

Under cross-examination Shaw denied seeing Patrick throwing the nails or hearing the nails thrown in the driveway. Although he stated Patrick slowed his automobile down he denied Patrick stopped in front of Kalis' house and said he could not tell whether the window was rolled up or down. Shaw also stated when he first noticed Patrick, Kalis was standing right next to him and that they were both facing the street.

Edgar Patrick denied throwing nails in Kalis' driveway. While under cross-examination he acknowledged that in August he drove his automobile by Kalis' house and slowed down in front of Kalis' house, he denied he stopped and explained his reason for doing so was because he had originally planned to try to talk to Kalis since he was the union steward to see if they could find some solution or way to settle the trouble and to get the employees back to work. However, on looking towards the house and seeing both Shaw and Kalis there he said he was afraid to stop, claiming he had previously been threatened by both of them. Patrick denied having any roofing nails with him on that occasion or knowing whether the automobile window was rolled down.

Neither Kalis nor Shaw claimed they actually saw Patrick throw the nails in the driveway. Although Kalis contends Patrick stopped in front of the driveway this is disputed by Shaw who denied he stopped and Kalis' version of the incident contained in his affidavit reflects only that he saw Patrick driving by his house. For these reasons which are also consistent with Patrick's testimony concerning the incident, I credit Patrick's denial that he threw the nails into Kalis' yard as alleged. Further, Kalis' sons and the neighbor's children¹⁷ were playing on Kalis' front lawn at the time and no evidence was proffered to rule out their being responsible for the nails being put there.

On August 12 employees including Egon Lewkut, Daniel Gray, and John Gray picketed at the Hubbell warehouse.

Daniel Gray testified that, while he was alone and sitting in the driver's side of his automobile which was parked across the street from the driveway to the Hubbell warehouse, pieces of a broken bottle entered into his automobile through the open window on the driver's side. This bottle had broken when it landed outside of but near the side of his automobile. Gray acknowledged he did not see anyone throw the bottle. Gray stated he then saw David Patrick, who was standing on the sidewalk on the side of the warehouse building in plain view, throw a rock at his automobile which struck the driver's side door about 6 inches below the window. The rock which he described about being 8 inches in diameter made a large dent in the door. Patrick then threw another rock, which Gray described as being twice the size of the first rock, at his automobile. This rock landed

about 4 feet from his automobile and then rolled underneath it striking the muffler.

Gray filed a police report concerning the incident.

Both John Gray and Egon Lewkut, who were on the sidewalk in front of the Hubbell warehouse at the time, corroborated Gray's testimony concerning the incident. Although both of them also saw the bottle they did not see who threw it.

David Patrick denied ever throwing rocks, bottles, or other objects at Daniel Gray's automobile.

I credit the testimony of Daniel Gray, John Gray, and Egon Lewkut rather than Patrick for reasons previously given and find that on August 12 David Patrick caused damage to the automobile of striking employee Daniel Gray by throwing rocks at it which hit it.

Egon Lewkut testified a few minutes after this rock throwing incident he and John Gray, Daniel Gray, and Warren Keys went over to the gate at the Hubbell warehouse to where David Patrick was. Patrick then cursed them and said he was going to burn their houses down. When Patrick also took their picket sign off the pole and attempted to take it back into the building with him, John Gray tried to grab the picket sign from Patrick claiming it was their sign. Daniel Gray, who corroborated Lewkut's testimony, stated Patrick made the statement about burning their houses down after telling them that if they wanted to play rough he would play rough. According to Daniel Gray, Patrick also mentioned to Kalis who was also present that he should stay away from Jeffrey Russell's house and if Kalis did not there would be some retaliation.

David Patrick denied informing any of the picketing employees that he was going to burn their house down.

Based on the credible testimony of Egon Lewkut and Daniel Gray I find that, on August 12, David Patrick threatened striking employees Daniel Gray, John Gray, Warren Keys, and Edward Kalis with burning down their houses.

On December 16 Egon Lewkut and Daniel Gray picketed at the Hubbell warehouse. While they were sitting in Gray's automobile which was parked on Hubbell Street in front of the warehouse drinking coffee and reading the paper, David Patrick drove a tractor with a semitrailer out of the premises and stopped it right beside of and within a few feet of Gray's automobile and Lewkut's automobile which was parked directly behind Gray's automobile. Jeffrey Russell also drove a pickup truck out of the premises and parked it facing them about 2 or 3 feet in front of Gray's automobile.

Lewkut testified that Patrick, Russell, and employee Kevin Stead,¹⁸ who was in the truck with Russell, all got out of their trucks. When Patrick started coming towards Lewkut he got out of the passenger side door of Gray's automobile¹⁹ and started running south on Hubbell with Patrick, Russell, and Stead all chasing him. Patrick had a crowbar and Russell had a piece of chain similar to a tow chain which was about 5 or 6 feet long. Lewkut also saw three or four other employees, who

¹⁷ Their ages were not established.

¹⁸ Stead began work for the Respondent after the strike started.

¹⁹ Gray was seated on the driver's side and was unable to get out that door because of Patrick's truck.

were hired after the strike began, come out of the gate to the driveway on the side of the warehouse and they also started chasing him. Patrick using profanity hollered for them to get Lewkut. After chasing Lewkut without being able to catch him those persons chasing him stopped and Lewkut went into a nearby business establishment and called the police. When Lewkut came out he saw Patrick and Russell in front of the warehouse and the other employees go into the gate towards the warehouse. While walking back to where their automobiles were parked he saw Patrick get a can of gasoline out of the pickup truck and pour gasoline on both his and Gray's automobile. Patrick also attempted to splash gasoline on Gray. Patrick and Russell then returned their trucks to the warehouse. When Lewkut went to where Gray was, Patrick came towards him swinging a crowbar in the air whereupon Lewkut began backing up and questioning Patrick about why he was coming after him. When Patrick mentioned something going wrong with his trucks, Lewkut's response was he did not have guts to even go back there or to be there then. Patrick using profanity called Lewkut a liar. When Lewkut refused to back up any further, Patrick returned to the warehouse. Lewkut then helped Gray look for his automobile keys which Russell had taken out of Gray's automobile and thrown across the street and he also went to a nearby building and called the police again. Patrick then drove another tractor out of the warehouse premises and parked it close in front of Gray's automobile where he remained a little while, while they were looking for the keys, and then returned the tractor to the warehouse.

Daniel Gray, who corroborated Lewkut's version of the incident except for denying he saw Russell with a weapon, further stated that when Patrick stopped chasing Lewkut, Patrick then came towards him whereupon he grabbed a board off the ground to protect himself at which time Patrick saw the board, put his crowbar down, got the gasoline can out of the pickup truck, from which he also tried to throw gasoline on him getting a small amount of gasoline on his shirt, and then poured gasoline on the hoods and tops of both his and Lewkut's automobiles. When Patrick came over to his automobile with the gasoline, Gray had the board in one hand and the hammer²⁰ in his other hand and was standing about 15 feet from his automobile. Patrick then put the gasoline can down, approached Gray and solicited him to put the board down and to fight. Russell then picked up the gasoline can, poured gasoline inside of Gray's automobile, reached inside and took Gray's ignition keys from his automobile and threw them across the street.

David Patrick acknowledged parking his truck in the road close beside the automobiles of Gray and Lewkut and that Russell parked his truck in front of and facing them. According to Patrick, he stopped his truck after Gray, who was sitting in his automobile with Lewkut, hollered some obscenities²¹ at him. Patrick said at the

time he heard these obscenities he was mad and upset because the previous Monday, which would have been December 13,²² he found that several of the Respondent's trucks had had their tires slashed and windshields busted resulting in \$18,000 to \$20,000 worth of damages.²³ While Patrick first stated he did not know what his intentions were in going over to where Gray and Lewkut were and denied it was to stop them from hollering, he subsequently gave as his reasons for stopping were because he was being sworn at and the trucks had been damaged the previous Monday.

Patrick's version of the incident was as he got of his truck Lewkut jumped out of the passenger side of Gray's automobile and ran over to where Russell was getting out of his truck and threw a cup of coffee in Russell's face.²⁴ Russell then made a grab for Lewkut who ran down the street and Russell ran into the warehouse and got an ax handle and came back and stood there with it. Patrick denied he or any other person ran after Lewkut.

Patrick acknowledged getting a can of gasoline out of the pickup truck and splashing a little bit of gasoline on the automobiles of both Gray and Lewkut.

Patrick, who denied at any time having a crowbar or any kind of weapon in his hand, stated when Gray jumped out of his automobile Gray had a hammer in one hand and a piece of 2-by-4 wood about 2 feet long in his other hand and swung the hammer at him whereupon he and Gray screamed at each other. Patrick said he and Russell returned their trucks to the warehouse where he got another tractor which had a broken windshield and side window and placed it at the end of the driveway and he and Russell sat in it. According to Patrick he heard Lewkut say to Gray in a loud voice using profanity that if they kept this up they would have to strike the trucks again.

Patrick denied chasing Lewkut or swinging a crowbar at Lewkut or Gray.

Both Russell and Stead corroborated Patrick's testimony except they both acknowledged they attempted to chase Patrick while he was running down the street but stopped when they saw they could not catch him. Russell estimated he only took a couple of steps while Stead estimated he chased Lewkut about 15 feet. Russell denied having any tow chains in the truck or that he poured gasoline into Gray's automobile.

Based on the testimony of Lewkut and Daniel Gray which I credit and David Patrick's admission he poured gasoline on their automobiles I find that on December 16 David Patrick and Jeffrey Russell, acting as the Respondent's agent²⁵ assaulted striking employees Egon

²⁰ December 16 was on a Thursday.

²¹ Patrick first stated that \$5000 to \$10,000 worth of damages had been done to the building and equipment.

²² Lewkut denied throwing coffee in Russell's face. However, he said that when Russell tried to grab him as he was running past Russell he flung the coffee in Russell's direction.

²³ Under Sec. 2(13) of the Act in determining whether a person is acting as an "agent" of another person so as to make that person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified is not controlling.

²⁰ According to Gray he picked up the hammer which he kept in his automobile to protect himself when he got out of his automobile.

²¹ Patrick denied knowing what obscene words were used.

Lewkut and Daniel Gray by chasing or advancing towards them with a chain or crowbar or swinging a crowbar at them in a threatening manner and also damaged their automobiles by pouring gasoline on them.²⁶

C. The Informal Settlement Agreement

On July 22 the Regional Director for Region 7 approved an informal settlement agreement in Case 7-CA-20708(1) which had been agreed to and executed by the Respondent and the Union. Under the terms of this agreement, the Respondent agreed not to interfere with its employees' rights under the Act; not to threaten employees with bodily harm or discharge for engaging in union activities; not to damage vehicles owned and operated by its employees because they engaged in strike activities on behalf of the Union; not to attempt to injure its employees because they engaged in strike activities on behalf of the Union; and not to discharge firearms at its employees because they engaged in strike activities on behalf of the Union.

The Regional Director in issuing the consolidated complaint on September 29 alleged the Respondent had refused to comply with the agreement by engaging in similar acts of violence and ordered the withdrawal of his approval of this agreement and vacated the agreement.

D. Analysis and Conclusions

The General Counsel contends contrary to the Respondent's denials that the Respondent violated Section 8(a)(1) of the Act by engaging in unlawful statements, threats, assaulted strikers, assaulted and damaged strikers' vehicles, shot a striker with a pellet gun, and threw nails in a striking employee's driveway; and that the informal settlement agreement in Case 7-CA-20708(1) was properly vacated and set aside by the Regional Director.

Section 8(a)(1) of the Act prohibits an employer from interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The test applied in determining whether a violation of Section 8(a)(1) of the Act has occurred is "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *I-T-E Imperial Corp.*, 216 NLRB 1076 (1975). The right of employees to picket at their employer's premises and to follow their employer's truck for purposes of picketing them when they made deliveries is a right protected under the Act. To interfere with such rights by an employer violates the Act. The right of employees to file grievances to enforce provisions of collective-bargaining agreements is also protected under the Act. See *Interboro Contractors*, 157 NLRB 1295, 1298 (1966), *enfd.* 388 F.2d 495 (2d Cir. 1967). Further, an employee's right to engage in activities as union steward is protected under the Act. *Star Expansion In-*

dustries, 164 NLRB 563 (1967), *enfd.* 409 F.2d 150 (D.C. Cir. 1969).

The findings *supra* established that about April 28 David Patrick threatened to break union steward Kalis' legs and threatened to discharge employees because Kalis had filed a grievance; on June 7 David Patrick struck Kalis' truck with his own truck to discourage Kalis and John Gray from following the Respondent's truck for purposes of picketing it if it made deliveries; on June 14 David Patrick attempted to run down striking employees on the picket line with his truck; on June 17 David Patrick assaulted the automobile of striker John Gray with a club because Gray and Kalis were following the Respondent's truck for purposes of picketing it if it made deliveries; on June 7 David Patrick informed striking employee Daniel Gray he was not going to sign a contract because he would have to bring all the striking employees back to work which he was not going to do, and informed Daniel Gray the Company was going out of business and the striking employees would no longer have jobs and they would not be recalled because of grievances having been filed; on August 12, David Patrick caused damage to the automobile of striker Daniel Gray by throwing rocks at it which hit it; on August 12 David Patrick threatened striking employees Daniel Gray, John Gray, Warren Keys, and Edward Kalis with burning down their houses; and on December 16 David Patrick and Jeffrey Russell, acting as the Respondent's agent, assaulted striking employees Egon Lewkut and Daniel Gray by chasing or advancing towards them with a chain or crowbar or swinging a crowbar at them in a threatening manner and also damaged their automobiles by pouring gasoline on them.

Applying the above test, I find the Respondent by engaging in each of these acts and conduct just enumerated, which were directed against the employees because of their union picketing and strike activities or because of grievances having been filed, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has thereby violated Section 8(a)(1) of the Act.

The remaining issue is whether the informal settlement agreement was properly vacated and set aside.

The findings as set forth *supra* establish that subsequent to the approval of the informal settlement agreement on July 22 the Respondent through David Patrick on August 12 caused damage to the automobile of striking employee Daniel Gray by throwing rocks at it which hit it and threatened striking employees Daniel Gray, John Gray, Warren Keys, and Edward Kalis with burning down their houses; and on December 16 through David Patrick and Jeffrey Russell assaulted striking employees Egon Lewkut and Daniel Gray by chasing or advancing towards them with a chain or crowbar or swinging a crowbar at them in a threatening manner and also damaged their automobiles by pouring gasoline on them. Since this conduct clearly violates the terms of the informal settlement agreement which prohibited such conduct, I find that the action of the Regional Director for Region 7 in vacating and setting aside the informal settlement agreement was proper and does not constitute

²⁶ The finding that Russell was acting as the Respondent's agent is based on the fact that Russell not only participated directly with Patrick in committing these acts but as the evidence disclosed was directed along with other employees by Patrick to get Lewkut on that occasion.

a defense to proceeding as the amended consolidated complaint.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III above, found to constitute unfair labor practices occurring in connection with the operations of the Respondent described in section I above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. Livernois Moving and Storage Co. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 243, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening to break the union steward's legs and to discharge the employees because the union steward had filed a grievance; striking an employee's truck with another truck to discourage striking employees from following the Respondent's truck for purposes of picketing if it made deliveries; attempting to run down striking employees on the picket line with a truck; assaulting the automobile of a striking employee with a club because striking employees were following the Respondent's truck for purposes of picketing it if it made deliveries; informing a striking employee it was not going to sign a contract because it would have to bring all the striking employees back to work which it was not going to do; informing a striking employee the Company was going out of business and the striking employees would no longer have jobs and they would not be recalled because of grievances having been filed; causing damage to the automobile of a striking employee by throwing rocks at it which hit it; threatening striking employees with burning down their houses; and assaulting striking employees by chasing or advancing towards them with a chain or crowbar or swinging a crowbar at them in a threatening manner and also damaging their automobiles by pouring gasoline on them Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. The informal settlement agreement in Case 7-CA-20708(1) was properly vacated and set aside after the Respondent violated its terms.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) of the Act, I shall recommend that it cease and

desist therefrom and take certain affirmative action to effectuate the policies of the Act.

On these findings of facts and conclusions of law and on the entire record, I issue the following recommended²⁷

ORDER

The Respondent, Livernois Moving and Storage Co., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening union stewards with bodily harm for filing grievances.

(b) Threatening to discharge employees for filing grievances.

(c) Damaging striking employees' vehicles to discourage them from following the Respondent's trucks for purposes of picketing them if they make deliveries.

(d) Attempting with vehicles to run down striking employees on the picket line.

(e) Assaulting striking employees' vehicles with clubs or other objects for following the Respondent's trucks for purposes of picketing them if they make deliveries.

(f) Informing employees the Respondent will not sign a contract because it would have to bring all the striking employees back to work which it will not do.

(g) Informing the employees the Respondent is going out of business and the striking employees will no longer have jobs and will not be recalled because of grievances being filed.

(h) Causing damage to striking employees' vehicles by throwing rocks or other objects at them.

(i) Threatening striking employees with burning down their houses.

(j) Assaulting striking employees with weapons.

(k) Damaging striking employees' vehicles by pouring gasoline on them.

(l) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Detroit, Michigan facilities copies of the attached notice marked "Appendix."²⁸ Copies of said notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

²⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²⁸ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the amended consolidated complaint be, and it hereby is, dismissed insofar as it alleges unfair labor practices not specifically found herein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT threaten union stewards with bodily harm for filing grievances.

WE WILL NOT threaten to discharge our employees for filing grievances.

WE WILL NOT damage our striking employees' vehicle to discourage them from following the Respondent's trucks for purposes of picketing them if they make deliveries.

WE WILL NOT attempt with vehicles to run down striking employees on the picket line.

WE WILL NOT assault our striking employees' vehicles with clubs or other objects for following the Respondent's trucks for purposes of picketing them if they make deliveries.

WE WILL NOT inform our employees that the Company will not sign a contract because we would have to bring all the striking employees back to work which we will not do.

WE WILL NOT inform our employees the Company is going out of business and the striking employees will no longer have jobs and will not be recalled because of grievances being filed.

WE WILL NOT cause damage to our striking employees' vehicles by throwing rocks or other objects at them.

WE WILL NOT assault our striking employees with weapons.

WE WILL NOT damage striking employees' vehicles by pouring gasoline on them.

WE WILL NOT in like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

LIVERNOIS MOVING AND STORAGE CO.